

SERVICE DATE – LATE RELEASE AUGUST 12, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. ISM 35008

PETITION FOR SUSPENSION AND INVESTIGATION
NMFC 100-AP SUPPLEMENT 2

Digest:¹ This decision denies a request to suspend or enjoin amendments to the Uniform Straight Bill of Lading set forth in the National Motor Freight Classification. The Board will determine whether to investigate in a subsequent decision, after further comments are filed.

Decided: August 12, 2016

On July 29, 2016, the Transportation and Logistics Council, Inc. (TLC) filed a petition to suspend and investigate the National Motor Freight Traffic Association, Inc.'s (NMFTA) proposed Supplement 2 to NMFC 100-AP, which revises the Uniform Straight Bill of Lading as set forth in the National Motor Freight Classification, its terms and conditions, and the rules in Item 360-B. The proposed revisions are to become effective August 13, 2016. On August 1, 2016, NASSTRAC, Inc. (NASSTRAC), also known as the National Shippers Strategic Transportation Council, filed a reply in support of TLC's petition for suspension and investigation. On August 5, 2016, NMFTA filed a reply in opposition to TLC's petition.

In its petition, TLC contends that NMFTA's proposed revisions to the Uniform Straight Bill of Lading are unreasonable because the changes "were made without notice to the public" and "shippers or other members of the transportation community [were not] given any opportunity to comment or protest the changes." TLC states that the proposed revisions would harm shippers by changing the provisions governing carrier liability for loss, damage, or delay, and the time limits for filing claims, to terms less favorable for shippers.

TLC asserts that the Board has the power, pursuant to 49 U.S.C. § 721(b)(4),² to grant an administrative injunction against NMFTA's proposed revisions and the power, under 49 U.S.C. § 13703(a)(5)(A), to suspend and investigate the proposed revisions. Specifically, TLC states that § 13703(a)(5)(A) "permits the Board to suspend and investigate the reasonableness of any

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² 49 U.S.C. § 721 is now codified at § 1321.

rate, rule, or classification made pursuant to an agreement” under that section and that the NMFTA provisions being challenged were established pursuant to § 13703. NASSTRAC supports TLC’s petition for suspension and investigation, and states that the proposed revisions to the Uniform Straight Bill of Lading “significantly alter the status quo between motor carriers and their shipper customers, to shippers’ disadvantage.”

NMFTA, in its reply, argues that TLC’s petition is without merit, both jurisdictionally and substantively. First, NMFTA argues that, because there is no approved agreement that places the subject matter of the petition under the Board’s jurisdiction, there is no statutory basis on which the relief sought can be granted. Second, NMFTA argues that its proposed changes to the Uniform Straight Bill of Lading are not inconsistent with the law.

Based on the record currently before the Board, the request to suspend or enjoin the effective date of NMFTA’s amendments to the Uniform Straight Bill of Lading will be denied. Although the Board declines to suspend the proposed amendments, we will defer ruling on the request that we investigate. To assist us in making that determination, parties should supplement their pleadings by September 12, 2016, and may file replies to the supplements by October 3, 2016. In their supplements, parties should address two points.

First, the parties should address whether the Board has authority to investigate in this instance. In particular, although the suspension and investigation provisions of § 13703(a)(5)(A) do not explicitly refer to an “approved agreement,” the reasonableness requirements of § 13701(a)(1)(C) apply only to “rates, rules, and classifications made collectively . . . under agreements approved” by the Board. Parties should therefore address whether § 13703(a)(5)(A) or 49 U.S.C. § 14701, which authorizes the Board to investigate matters within its authority, can be used as a basis for investigation here in light of the fact that the agreement at issue was not approved by the Board.

Second, parties should address in more detail the Board’s prior decision in Motor Carrier Bureaus–Periodic Review Proceeding, EP 656 (STB served May 7, 2007). In that proceeding, the Board terminated its approval of all remaining motor carrier rate bureau agreements to help ensure a competitive motor carrier industry. See id. at 5, 16, 27. Parties should address the effect of this decision and any impact it has on whether the Board should investigate the proposed changes to the Uniform Straight Bill of Lading at issue here.

It is ordered:

1. The Board denies TLC's request to enjoin or suspend the effective date of NMFTA's amendments as described above.
2. Parties should file supplemental pleadings, as described above, by September 12, 2016. Replies, if any, are due by October 3, 2016.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.